

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:  
Patrizia PATERLINI-BRECHOT

Patent No.: 7,651,838 B2

Confirmation No.: 7652

Issued: January 26, 2010

Art Unit: 1634

For: PRENATAL DIAGNOSIS METHOD ON  
ISOLATED FOETAL CELL OF MATERNAL  
BLOOD

Examiner: C. J. Myers

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT**

**UNDER 37 CFR § 1.705 (d)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Pursuant to CFR § 1.705 (d), and in response to the Decision on Petition dated December 3, 2009, Patentee hereby requests reconsideration of the Patent Term Adjustment (PTA) indicated on the Issue Notification for Patent No. 7,651,838 B2 (Exhibit 1). The Issue Notification indicates that the PTA is 0 days. However, Patentee submits that the PTA should correctly be 104 days.

**STATEMENT OF FACTS**

1. The Issue Notification, which issued in this case on January 6, 2010, indicated that the PTA to date was 0 days.
2. The U.S. Patent and Trademark Office's PTA History, as found in the Patent Application Information Retrieval (PAIR) system, indicates a PTA due to

prosecution delays of 0 days, based upon 334 days of USPTO delays minus 498 days of Applicant delay (see Exhibit 2).

3. However, the PAIR system does not indicate any PTA due to the USPTO's failure to issue a patent within three (3) years (36 months) from the actual filing date of the application, October 20, 2003 (37 C.F.R. § 1.702(b)), which delay was 148 days.
4. Patentee contends that the exclusion period for the appeal process should not be applied to this case since a Request for Reconsideration was filed on March 28, 2007 removing the case from the appeal process.
5. Additionally, the USPTO incorrectly debited PTA days for the filing of drawings on July 16, 2009. As is indicated on the copy of the drawing scanned in on the PALM system on July 16, 2009, the drawing was received by date stamped as received on August 13, 2004 (see Exhibit 3). Patentee did not file the sheet of drawings, but rather it appears the USPTO scanned this document into the PALM system on this date. Therefore, Patentee should not have been debited 120 PTA days for the filing of the drawing sheet. Patentee further submits that this issue is being timely addressed since this 120 day debit was not indicated in the U.S. Patent and Trademark Office's PTA History submitted with the August 27, 2009, PTA Petition, (Exhibit 4).
6. In accordance with the recent District Court decision in *Wyeth et al. v. Kappos*, (United States Court of Appeals for the Federal Circuit (2009-1120)), the correct PTA should be 482 days of PTO Prosecution delay, less 378 days of applicant delay, for a total of 104 days of PTA.
7. Accordingly, Patentee hereby requests that the U. S. Patent and Trademark Office correct the calculation of the PTA for the above-identified patent to 104 days.

**COMPLIANCE WITH REQUIREMENTS OF  
37 CFR § 1.705 (b)(1) AND (2)**

8. A statement of facts is presented above, detailing the relevant dates and the correct PTA.
9. The present application is not subject to any Terminal Disclaimer or any expiration date specified in a Terminal Disclaimer (§ 1.705(b)(2)(iii)).
10. There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the above-identified application (§ 1.705(iv)(B)).

**CONCLUSION**

The USPTO is requested to correctly indicate that U.S. Patent No. 7,651,838 B2 is entitled to 104 days of Patent Term Adjustment.

**PAYMENT OF FEES**

As set forth in the attached Fee Transmittal, the Commissioner is hereby authorized to charge the amount of \$200.00 to Deposit Account No. 02-2448 for the consideration of this Request as required by 37 C.F.R. § 1.18(e).

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Gerald M. Murphy, Jr., Reg. No. 28,977 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated:

**MAR 25 2010**

Respectfully submitted,

By   
Gerald M. Murphy, Jr.  
Registration No.: 28,977  
BIRCH, STEWART, KOLASCH & BIRCH, LLP  
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Suite 100 East  
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Falls Church, Virginia 22040-0747  
(703) 205-8000  
Attorney for Applicant

Attachments:

- Issue Notification, (Exhibit 1)
- U.S. PTO PAIR PTA Calculation, (Exhibit 2)
- Copy of drawing sheet from U.S. PTO PAIR, (Exhibit 3)
- U.S. PTO PAIR PTA Calculation dated July 30, 2009, (Exhibit 4)



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	ISSUE DATE	PATENT NO.	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,744	01/26/2010	7651838	2121-0178P	7652

2292 7590 01/06/2010  
BIRCH STEWART KOLASCH & BIRCH  
PO BOX 747  
FALLS CHURCH, VA 22040-0747

## ISSUE NOTIFICATION

The projected patent number and issue date are specified above.

### Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment is 0 day(s). Any patent to issue from the above-identified application will include an indication of the adjustment on the front page.

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Application Assistance Unit (AAU) of the Office of Data Management (ODM) at (571)-272-4200.

APPLICANT(s) (Please see PAIR WEB site <http://pair.uspto.gov> for additional applicants):

Patrizia Paterlini-Brechot, Paris, FRANCE;

10/695,744	PRENATAL DIAGNOSIS METHOD ON ISOLATED FOETAL CELL OF MATERNAL BLOOD	03-25- 2010::10:44:14
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### Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/695,744

Filing or 371(c) Date:	10-30-2003	USPTO Delay (PTO) Delay (days):	-
Issue Date of Patent:	01-26-2010	Three Years:	-
Pre-Issue Petitions (days):	-	Applicant Delay (APPL) Delay (days):	-
Post-Issue Petitions (days):	-	Total PTA (days):	0
USPTO Adjustment (days):	-	Explanation Of Calculations	

### Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
01-06-2010	PTA 36 Months		
01-26-2010	Patent Issue Date Used in PTA Calculation	29	
12-08-2009	Dispatch to FDC	↑	
12-08-2009	Dispatch to FDC	↑	
12-08-2009	Email Notification	↑	
12-03-2009	Mail-Petition Decision - Dismissed	↑	
12-02-2009	Petition Decision - Dismissed	↑	
09-03-2009	Application Is Considered Ready for Issue	↑	
08-28-2009	Issue Fee Payment Verified	↑	
08-27-2009	Petition Entered		
08-28-2009	Issue Fee Payment Received		
07-16-2009	Workflow - Drawings Finished		120
07-16-2009	TC Return to Pubs		↑
06-23-2009	Receipt into Pubs		↑
06-12-2009	Receipt into Pubs		↑
06-08-2009	Sequence Forwarded to Pubs on Tape		↑
05-28-2009	Mail Notice of Allowance		↑
05-25-2009	Document Verification		↑
05-25-2009	Notice of Allowance Data Verification Completed		↑
05-22-2009	Examiner's Amendment Communication		↑
04-25-2009	Date Forwarded to Examiner		↑
04-15-2009	Response after Non-Final Action		90
04-15-2009	Request for Extension of Time - Granted		↑
10-15-2008	Electronic Review		↑
10-15-2008	Email Notification		↑
10-15-2008	Mail Non-Final Rejection		↑
10-09-2008	Non-Final Rejection		
02-20-2008	Information Disclosure Statement considered		
08-20-2008	Date Forwarded to Examiner		
08-20-2008	Date Forwarded to Examiner		
08-05-2008	Request for Continued Examination (RCE)		92

08-20-2008	Disposal for a RCE / CPA / R129	↑
08-05-2008	Request for Extension of Time - Granted	↑
08-05-2008	Workflow - Request for RCE - Begin	↑
02-20-2008	Information Disclosure Statement (IDS) Filed	↑
02-20-2008	Miscellaneous Incoming Letter	↑
02-20-2008	Information Disclosure Statement (IDS) Filed	↑
02-06-2008	Electronic Review	↑
02-05-2008	Email Notification	↑
02-05-2008	Mail Final Rejection (PTOL - 326)	↑
01-31-2008	Final Rejection	
12-18-2007	Email Notification	
12-03-2007	Mail Miscellaneous Communication to Applicant	
11-29-2007	Miscellaneous Communication to Applicant - No Action Count	
10-31-2007	Improper Request for Continued Examination	
11-29-2007	Date Forwarded to Examiner	
10-31-2007	Response after Non-Final Action	76
10-31-2007	Request for Extension of Time - Granted	↑
10-31-2007	Workflow - Request for RCE - Begin	↑
05-17-2007	Electronic Review	↑
05-16-2007	Email Notification	↑
05-16-2007	Mail Non-Final Rejection	↑
05-10-2007	Non-Final Rejection	
03-30-2007	Date Forwarded to Examiner	
03-30-2007	Date Forwarded to Examiner	
03-30-2007	Date Forwarded to Examiner	
03-28-2007	Request for Continued Examination (RCE)	
03-30-2007	Disposal for a RCE / CPA / R129	
03-28-2007	Workflow - Request for RCE - Begin	
12-20-2006	Mail Advisory Action (PTOL - 303)	
12-18-2006	Advisory Action (PTOL-303)	
12-08-2006	Date Forwarded to Examiner	
11-28-2006	Amendment/Argument after Notice of Appeal	
11-28-2006	Notice of Appeal Filed	61
11-28-2006	Request for Extension of Time - Granted	↑
06-28-2006	Mail Final Rejection (PTOL - 326)	↑
06-26-2006	Final Rejection	
03-31-2006	Miscellaneous Incoming Letter	
03-31-2006	Certified Translation of Foreign Priority Document	
04-12-2006	Date Forwarded to Examiner	
03-31-2006	Response after Non-Final Action	59
03-31-2006	Request for Extension of Time - Granted	↑

04-07-2006	CRF Is Good Technically / Entered into Database	305	↑
10-31-2005	Mail Non-Final Rejection		↑
10-27-2005	Non-Final Rejection		↑
02-12-2004	Information Disclosure Statement considered		↑
10-11-2005	IFW TSS Processing by Tech Center Complete		↑
10-11-2005	Case Docketed to Examiner in GAU		↑
02-12-2004	Reference capture on IDS		↑
02-12-2004	Information Disclosure Statement (IDS) Filed		↑
02-12-2004	Information Disclosure Statement (IDS) Filed		↑
02-12-2004	Request for Foreign Priority (Priority Papers May Be Included)		↑
11-17-2004	Application Return from OIPE		↑
11-17-2004	Application Return TO OIPE		↑
11-17-2004	Application Return from OIPE		↑
11-17-2004	Application Is Now Complete		↑
11-17-2004	Application Return TO OIPE		↑
11-17-2004	Application Return from OIPE		↑
11-17-2004	Application Is Now Complete		↑
11-17-2004	Application Return TO OIPE		↑
11-17-2004	Application Dispatched from OIPE		↑
11-17-2004	Application Is Now Complete		↑
10-12-2004	Additional Application Filing Fees		↑
10-30-2003	Claim Preliminary Amendment		↑
08-13-2004	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic		↑
10-12-2004	Translation of Claims into English		↑
10-12-2004	Applicant has submitted new drawings to correct Corrected Papers problems		↑
10-12-2004	Translation of Specification into English		↑
08-11-2004	Notice Mailed--Application Incomplete--Filing Date Assigned		↑
01-21-2004	Cleared by OIPE CSR		↑
12-02-2003	IFW Scan & PACR Auto Security Review		↑
10-30-2003	Initial Exam Team nn		↑

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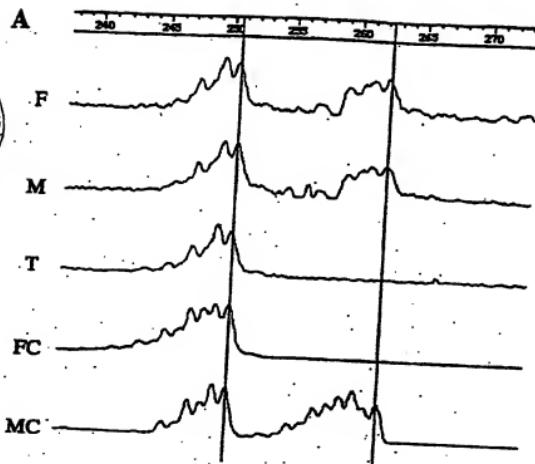
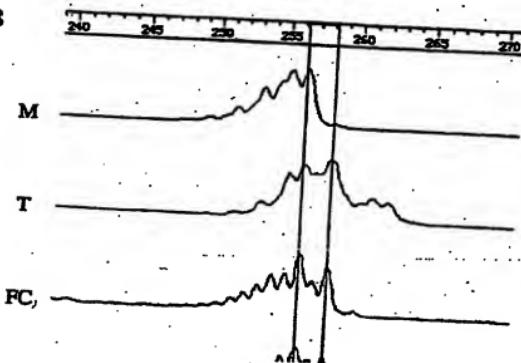
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Figure 3

Exhibit 3

10/695,744	PRENATAL DIAGNOSIS METHOD ON ISOLATED FOETAL CELL OF MATERNAL BLOOD	07-30- 2009::15:36:04
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### Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/695,744

Filing or 371(c) Date:	10-30-2003	USPTO Delay (PTO) Delay (days):	305
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	378
Post-Issue Petitions (days):	+0	Total PTA (days):	0
USPTO Adjustment(days):	+0	Explanation Of Calculations	

### Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
05-28-2009	Mail Notice of Allowance		
05-25-2009	Document Verification		
05-25-2009	Notice of Allowance Data Verification Completed		
05-22-2009	Examiner's Amendment Communication		
04-25-2009	Date Forwarded to Examiner		
04-15-2009	Response after Non-Final Action	90	↑
04-15-2009	Request for Extension of Time - Granted		↑
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10-15-2008	Email Notification		↑
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08-20-2008	Date Forwarded to Examiner		↑
08-05-2008	Request for Continued Examination (RCE)		↑
08-20-2008	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)		↑
08-05-2008	Request for Extension of Time - Granted		↑
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01-31-2008	Final Rejection		↑
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11-29-2007	Miscellaneous Communication to Applicant - No Action Count		↑
10-31-2007	Improper Request for Continued Examination		↑
11-29-2007	Date Forwarded to Examiner		↑
10-31-2007	Response after Non-Final Action	76	↑

EXHIBIT 4

10-31-2007	Request for Extension of Time - Granted	↑
10-31-2007	Workflow - Request for RCE - Begin	↑
05-17-2007	Electronic Review	↑
05-16-2007	Email Notification	↑
05-16-2007	Mail Non-Final Rejection	↑
05-10-2007	Non-Final Rejection	↑
03-30-2007	Date Forwarded to Examiner	↑
03-30-2007	Date Forwarded to Examiner	↑
03-30-2007	Date Forwarded to Examiner	↑
03-28-2007	Request for Continued Examination (RCE)	↑
03-30-2007	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)	↑
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12-20-2006	Mail Advisory Action (PTOL - 303)	↑
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01-21-2004	Cleared by OIPE CSR	¶
12-02-2003	IFW Scan & PACR Auto Security Review	¶
10-30-2003	Initial Exam Team nn	¶

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